



29 APR 2009

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Charles A. Muserlian
HEDMAN AND COSTIGAN
1185 Avenue of the Americas
New York, NY 10036

In re Application of :
GUERNALEC *et al* :
U.S. Application No.: 10/587,465 :
PCT No.: PCT/FR2005/000224 :
Int. Filing Date: 02 February 2005 :
Priority Date: 04 February 2004 :
Attorney Docket No.: 475.020 :
For: DEVICE FOR NITRIDING BY IONIC :
IMPLANTATION OF AN ALUMINIUM :
ALLOY PART AND CORRESPONDING :
METHOD :

DECISION ON PETITION

TO WITHDRAW HOLDING

OF ABANDONMENT

This decision is in response to the papers filed 09 July 2008 and 27 April 2009 which are treated as a petition to withdraw the holding of abandonment pursuant to 37 CFR 1.181(a). No fee is required.

BACKGROUND

On 22 September 2006, applicants purportedly submitted an executed declaration. However, these papers were not located in the file.

On 03 April 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required. A two-month time limit in which to respond was set with extensions of time available.

On 09 April 2007, applicants responded to the Form PCT/DO/EO/905 claiming that an executed declaration was previously submitted on 22 September 2006. Applicants provided a copy of the date-stamped postcard; however, a copy of the executed declaration was not provided.

On 05 June 2007, applicants submitted an Information Disclosure Statement.

On 27 August 2007, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916) indicating that a response was received on 05 June 2007 but that the requirements of the Form PCT/DO/EO/905 have not been completed.

On 31 August 2007, applicants responded claiming that the documents filed on

05 June 2007 was not a response to the Form PCT/DO/EO/905, but merely an Information Disclosure Statement. Applicants again stated that a declaration was submitted on 22 September 2006 and provided a copy of the date-stamped postcard; however, a copy of the executed declaration was again not provided.

On 27 March 2008, a request for status was mailed.

On 27 June 2008, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicants failed to respond to the Form PCT/DO/EO/905 mailed 03 April 2007 within the time period set.

On 09 July 2008, applicant filed a petition to withdraw the holding of abandonment which was accompanied by, *inter alia*, copies of the documents filed 09 April 2007 along with a date-stamped postcard receipt for those documents.

On 27 April 2009, at the request of the undersigned, applicants filed a copy of the declaration purportedly filed 22 September 2005 along with a date-stamped postcard for those documents.

DISCUSSION

Applicants response filed 09 April 2007 was not sufficient. Applicants failed to provide a copy of the declaration purportedly filed 22 September 2005.

MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

In this case, applicants provided a copy of the date-stamped postcard receipt for documents submitted 22 September 2006. The postcard receipt records that among the papers received in the USPTO included an "Executed declaration." The postcard receipt is stamped "OIPE SEP 22 2005" across its face. The U.S. application number and docket number are listed on the postcard receipt. Applicants also provided a copy of the declaration filed 22 September 2006.

Applicants have provided *prima facie* evidence that the declaration was originally received by the USPTO on 22 September 2006.

DECISION

For the reasons noted above, applicants' petition to withdraw the holding of

abandonment is **GRANTED**.

The Form PCT/DO/EO/909 mailed 27 June 2008 is hereby **VACATED**.

The declaration originally filed 22 September 2006 is in compliance with 37 CFR 1.497(a) and (b).

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 02 February 2005 under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 22 September 2006.

This application is being forwarded to the Office of Patent Application Processing for further processing in accordance with this decision.

A handwritten signature in black ink that reads "James Thomson". The signature is written in a cursive, flowing style.

James Thomson
Attorney Advisor
Office of PCT Legal Administration

Tel.: (571) 272-3302